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In The
Supreme Court of the United States

IN RE: ROY A. RASPANTI

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

Douglas M. Schmidt
ATTORNEY AT LAW
Counsel of Record
335 City Park Avenue
New Orleans, LA 70119
(504) 482-0159

Roy Raspanti
John A. Occhipinti
ATTORNEY & COUNSELOR AT LAW
110 Veterans Boulevard
Suite 360
Metairie, LA 70005-4930
(504) 835-5388

Counsel for Petitioner

Dated: August 20, 2009

THE LEX GROUP DC ♦ 1750 K Street N.W. ♦ Suite 475 ♦ Washington, DC 20006
(202) 955-0001 ♦ (800) 815-3791 ♦ Fax: (202) 955-0022 ♦ www.thelexgroupdc.com

QUESTIONS PRESENTED FOR REVIEW

1. Does Rule XIX Section 12A of the Louisiana Supreme Court Rules for Lawyer Disciplinary Enforcement violate the First Amendment of the United States Constitution in that it deprives a lawyer of his right of access to the courts?

2. Does Rule XIX Section 12A of the Louisiana Supreme Court Rules for Lawyer Disciplinary Enforcement as interpreted by the Louisiana Supreme Court violate the First Amendment of the United States Constitution in that it deprives a lawyer of his right of access to the courts?

3. Does Rule XIX Section 12A of the Louisiana Supreme Court Rules for Lawyer Disciplinary Enforcement violate the due process clause of the Fifth and Fourteenth Amendments of the United States Constitution in that it deprives a lawyer of his right of access to the courts by prohibiting a lawyer from filing suit against a complainant who defames him in the attorney disciplinary process?

4. Is the public reprimand of a lawyer by the Louisiana Supreme Court based upon Rule XIX Section 12A of the Rules for Lawyer Disciplinary Enforcement for having filed a lawsuit in 2003 against a complainant for defamation in the Office of Disciplinary Counsel, a violation of his right to due process of law under the Fifth and Fourteenth

Amendments to the United States Constitution if the Louisiana Supreme Court did not decide that Rule XIX Section 12A could be the basis for discipline until March 17, 2009?

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CITATIONS OF OPINIONS AND ORDERS

The citation of the opinion of the Louisiana Supreme Court is *In Re: Roy A. Raspanti*, 8 So.3d 526 (La. 3/17/09), #08-B-0954, Rehearing denied 5/22/09. (App. 1a-35a)

JURISDICTIONAL STATEMENT

The decision of the Louisiana Supreme Court was issued on March 17, 2009. (App. 1a-33a) The rehearing was denied on May 22, 2009. (App. 34a-35a) This petition is filed within 90 days thereafter. The court of last resort in Louisiana, the Louisiana Supreme Court, has decided an important federal (constitutional) question in a way that conflicts with the decisions of several United States Courts of Appeals and with decisions of the United States Supreme Court. This court has jurisdiction pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

This case involves the following constitutional, and statutory provisions, which are reproduced in the Appendix at pages 58-59:

U.S. Const. amend. I
U.S. Const. amend. V
U.S. Const. amend XIV
Lawyer Disciplinary Enforcement Rule 19 § 12A

STATEMENT OF THE CASE

Beginning in 1989, Roy Raspanti represented his sister, Janine Raspanti, in several civil matters, at the urging of his parents. Roy Raspanti, in 1989 did not want to represent her in a tort suit and referred her to another attorney who told her that her case was worth about $5,000.00. She asked Roy Raspanti once again to represent her and at the urging of herself and their mother, he relented and agreed to represent her. Later, while he was at the same time representing her in this personal injury case, she asked him to represent her in an employment discrimination case against the United States Army Corps of Engineers in 1992 and in another accident case in 1991.

In 1993, Roy Raspanti successfully obtained a $250,000.00 settlement in the initial 1989 personal injury case. In the Spring of 1994, Janine Raspanti fired Roy Raspanti from the 1991 accident case and from the employment discrimination case against the United States Army Corps of Engineers. On April 27, 1994, she filed a Bar Association complaint against him based upon allegations relating to his fee in the 1989 personal injury case and his representation in the Corps of Engineers case. In her complaint, she alleged that Roy Raspanti had engaged in unethical conduct in both the above-referenced matters. Three months later, the Office of Disciplinary Counsel dismissed her complaint. She appealed the dismissal to a Hearing Committee, and then to the Disciplinary Board. Both the Committee and the Board found the Office of Disciplinary Counsel dismissal to be correct.

In September of 1997[1], Janine Raspanti again reported Roy Raspanti to the Office of Disciplinary Counsel, alleging that he had engaged in a "dishonest, fraudulent and deceitful misrepresentation" in connection with the United States Army Corps of Engineers case and, that he had engaged in document concealment, was "exploitative" and "[breached] his ethics." In short order, the Office of Disciplinary Counsel determined that Janine Raspanti's "new" complaint was so meritless that it did not even require a response from Roy Raspanti and dismissed it without further investigation. Unfortunately, due to an oversight, the Office of Disciplinary Counsel failed to notify Roy Raspanti of Janine Raspanti's September 1997 complaint. Roy Raspanti did not learn of this complaint until the summer of 2001.

In July 1999, Janine Raspanti asked Roy Raspanti to again represent her in her action against the United States Army Corps of Engineers given that each of the two attorneys she had hired to replace him were unable to successfully conclude the matter.

Roy Raspanti initially refused to represent her but, at the behest of his mother and father, and not knowing that Janine Raspanti had filed a second disciplinary complaint against him, he once again agreed to represent her. In 2000 Roy Raspanti obtained $38,544.14 for her on the administrative level and an additional $52,000.00 in the United

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[1] Roy Raspanti had not represented Janine Raspanti since the Spring of 1994.

States District Court for the Eastern District of Louisiana, plus $29,953.84 in attorney's fees in November of 2001.

In December 2001, Janine Raspanti filed a third Office of Disciplinary Counsel complaint against Roy Raspanti. The complaint made a plethora of allegations against Roy Raspanti and even referenced the two prior representations from which respondent had twice been exonerated from wrongdoing. After a six month investigation, the Office of Disciplinary Counsel dismissed the complaint. Janine Raspanti again appealed the Office of Disciplinary Counsel's dismissal, this time all the way to the Louisiana Supreme Court. At each level of appeal, the reviewing body found that the allegations were without merit and affirmed the dismissal. This process lasted until August 29, 2003.

Aside from the allegations of misconduct that Janine Raspanti made against Roy Raspanti to the Office of Disciplinary Counsel in this, her third complaint, she made numerous defamatory statements and accusations regarding him in other contexts. She filed unsuccessful motions in the United States District Court for the Eastern District of Louisiana and the United States Court of Appeals for the Fifth Circuit where her employment matter was pending, which motions contained essentially the same complaints she made against him in the Office of Disciplinary Counsel.

Seeking to protect himself from further abuse by Janine Raspanti, and to recover the fees and expenses she still owed him, Roy Raspanti sued her

for breach of contract and defamation in January 2003. He asserted in said suit that she defamed him in the United States District Court for the Eastern District of Louisiana, the United States Court of Appeals for the Fifth Circuit, the Louisiana Supreme Court and the Office of Disciplinary Counsel.

On November 30, 2005, Janine Raspanti reported Roy Raspanti to the Office of Disciplinary Counsel for the fourth time. Roy Raspanti's lawsuit against Janine Raspanti remains pending at this time.

On March 17, 2009, the Louisiana Supreme Court held for the first time in the case of *In Re: Roy A. Raspanti*, #08-B-0954, that Rule XIX Section 12A of the Rules of Lawyer Disciplinary Enforcement accords complainants absolute immunity from civil suits. In so doing, it also found that Roy Raspanti violated Rule XIX Section 12A when he filed suit against complainant Janine Raspanti in 2003 for having defamed him in the Office of Disciplinary Counsel. This was the first time any Louisiana lawyer had ever been sanctioned under Rule XIX Section 12A:

> ". . .we are issuing a sanction for a matter for which no one has been sanctioned previously." *In Re: Roy A. Raspanti*, 8 So.3d 526, 540

At the time that Roy Raspanti filed suit against the complainant in 2003, Rule XIX Section 12A could not be the basis for discipline.

The federal question relative to question 1 herein (First Amendment of the United States Constitution) was raised in the Application for Rehearing filed in the Louisiana Supreme Court. (See 5/5/09 Supplemental Memorandum in Support of Respondent's Application for Rehearing, App. 36a-48a.) The federal question relative to question 2 herein was raised in the Application for Rehearing filed in the Louisiana Supreme Court. (See 3/31/09 Application for Rehearing, p. 6-8 (App. 52a-57a); 4/14/09 Response to Opposition of Office of Disciplinary Counsel to Respondent's Application for Rehearing, p. 6, App. 49a-51a).

ARGUMENT

1. DOES RULE XIX SECTION 12A OF THE LOUISIANA SUPREME COURT RULES FOR LAWYER DISCIPLINARY ENFORCEMENT VIOLATE THE FIRST, FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION IN THAT IT DEPRIVES A LAWYER OF HIS RIGHT OF ACCESS TO THE COURTS BY PROHIBITING A LAWYER FROM FILING SUIT AGAINST A COMPLAINANT WHO DEFAMES HIM IN THE ATTORNEY DISCIPLINARY PROCESS?

It is respectfully submitted that this Honorable Court should review this Writ of Certiorari for the reason that the state court of last resort for the State of Louisiana, *i.e.*, the Louisiana Supreme Court, has decided an important federal (constitutional) question in a way that conflicts with decisions of the United States Court of Appeals for

the Fourth, Fifth and Seventh Circuits and relevant decisions of the United States Supreme Court.

More Particularly, the Louisiana Supreme Court's March 17, 2009 decision in *In Re: Roy A. Raspanti*, #08-B-0954, 8 So.3d 526 (La. 2009, 3/17/09), that Rule XIX Section 12A of the Rules of Lawyer Disciplinary Enforcement "accords complainants absolute immunity from civil suits. . ." (*In Re: Roy A. Raspanti,* p. 540), conflicts with *Chambers v. Baltimore and Ohio Railroad*, 207 U.S. 142, 28 S. Ct. 34, 35, 52 L. Ed. 143 (1907); *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S. Ct. 609, 30 L. Ed. 642 (1972); *N.A.A.C.P. v. Button*, 371 U.S. 417, 83 S. Ct. 328, 336 L. Ed. 405 (1963); *Ryland v. Shapiro*, 708 F.2d 967, 971-971 (5th Cir. 1983); *Wilson v. Thompson*, 593 F.2d 1375 (5th Cir. 1979); *Coastal States Marketing, Inc. v. Hunt*, 694 F.2d 1358, 1363 (5th Cir. 1983); *McCray v. Maryland*, 456 F.2d 1, 6 (4th Cir. 1972); *Harris v. Pate*, 440 F.2d 315, 317 (7th Cir. 1971).

The legal issue before it according to the Louisiana Supreme Court in *In Re: Roy A. Raspanti*, #08-B-0954, was *"res nova"* (*In Re: Roy A. Raspanti*, 8 So.3d 526, 528, footnote 1) and was stated by the court as follows:

> ". . .whether an attorney's violation of Rule XIX Section 12(A) can be the basis for discipline and the imposition of sanctions. *In Re: Roy A. Raspanti*, 8 So.3d 526, 528.

Rule XIX Section 12A of the Rules of Lawyer Disciplinary Enforcement states:

Section 12. Immunity

"A. From Civil Suits. Communications to the board, hearing committees, or disciplinary counsel relating to lawyer misconduct or disability and testimony given in the proceedings shall be absolutely privileged, and no lawsuit predicated thereon may be instituted against any complainant or witness. Members of the board, members of the hearing committees, disciplinary counsel, staff, probation monitors and monitoring lawyers appointed pursuant to this rule or its appendices, inventorying lawyers appointed pursuant to Section 27, members of the Ethics Advisory Committee adopted by resolution to the House of Delegates and approved by the Board of Governors of the Louisiana State Bar Association on November 2, 1991 and members of the Lawyer Advertising Advisory Service Committee adopted by resolution to the House of Delegates and approved b y the Board of Governors of the Louisiana State Bar Association on June 9, 1995, shall be immune from suit for any conduct in the course of their official duties or reasonably related to their official duties.

B. From Criminal Prosecution. Upon application by disciplinary counsel and

> notice to the appropriate prosecuting authority, the court may grant immunity from criminal prosecution to a witness in a discipline or disability proceeding."

The Louisiana Supreme Court found that Rule XIX Section 12A accords complainants absolute immunity from civil suits. *In Re: Roy A. Raspanti*, 8 So.3d 526, 540. The court also found that an attorney is subject to discipline for filing suit against a complainant. It found that filing suit against a complainant is a violation of Rule XIX Section 12A and violation of that rule can be the basis for discipline and the imposition of sanctions. More particularly, it found that Roy Raspanti, by filing suit against a complainant for defamation in 2003 violated Rule XIX Section 12A, an action that subjected him to the disciplinary process. *In Re: Roy A. Raspanti*, p. 534-535.

It is respectfully submitted that as a result of this decision of the Louisiana Supreme Court, Rule XIX Section 12A of the Louisiana Supreme Court Rules for Lawyer Disciplinary Enforcement violates the First, Fifth and Fourteenth Amendments of the United States Constitution in that it deprives lawyers of their right of access to the courts. It is respectfully submitted that only a compelling state interest will justify such a deprivation. It is respectfully submitted that there is no compelling state interest which will justify such an intrusion.

The United States Court of Appeals for the Fifth Circuit stated the following in *Ryland v. Shapiro*, 708 F.2d 967, 971-972 (1983):

> *"The Substantive Right of Access to Courts:*
>
> The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution. In *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 28 S. Ct. 34, 52 L. Ed. 143 (1907), the Supreme Court characterized this right of access in the following terms:
>
> > The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution.
>
> 207 U.S. at 148, 28 S. Ct. at 35 (citations omitted). It is clear that the Court viewed the right of access to the courts as one of the

privileges and immunities accorded citizens under Article 4 of the Constitution and the Fourteenth Amendment.

In *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972), the Supreme Court found in the First Amendment a second constitutional basis for this right of access: 'Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right of petition.' *Id.* 92 S. Ct. at 612. This court recognized the First Amendment right of access to the courts in *Wilson v. Thompson*, 593 F.2d 1375 (5th Cir. 1979), where we stated: 'It is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievances.' *Id.* at 1387. See also *N.A.A.C.P. v. Button*, 371 U.S. 415, 83 S. Ct. 328, 3369 L. Ed. 2d 405 (1963); *Coastal States Marketing, Inc. v. Hunt*, 694 F.2d 1358, 1363 (5th Cir. 1983).

A number of other courts have also recognized that this right of access is encompassed by the First Amendment right to petition. See *McCray v. Maryland*, 456 F.2d 1, 6 (4th Cir. 1972); *Harris v. Pate*, 440 F.2d 315, 317 (7th Cir. 1971); *Pizzolato v. Perez*, 524 F. Supp. 914, 921 (E.D. La. 1981); *Creus v. Pertrosky*, 509 F. Supp. 1199, 1204 n. 10 (W.D. Pa. 1981).

> . . .In conclusion, it is clear that, under our Constitution, the right of access to the courts is guaranteed and protected from unlawful interference and deprivation by the state, *and only compelling state interests will justify such intrusions."* (Emphasis added)

The Fifth Circuit also pointed out that another constitutional basis for the right of access to the courts is found in the due process clause. See p. 972, *Ryland.*

In *N.A.A.C.P. v. Button*, 83 S. Ct. 328, 340-341 (1983) the State of Virginia contended that it had a subordinating interest in the regulation of the legal profession which justified limiting the petitioner's First Amendment rights. Virginia argued that N.A.A.C.P.'s activities fell "within the traditional purview of state regulation of professional conduct." See p. 340-341, *N.A.A.C.P.* The Supreme Court stated:

> ". . .The decisions of this Court have consistently held that only a *compelling state interest* in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms. Thus it is no answer to the constitutional claims asserted by the petitioner to say, as the Virginia Supreme Court of Appeals has said, that the purpose of these regulations was merely to insure high professional standards and not to curtail free expression. *For a State may not, under the guise of prohibiting professional misconduct,*

> *ignore constitutional rights.* See *Schware v. Board of Bar Examiners*, 353 U.S. 232, 77 S. Ct. 742, 1 L. Ed. 2d 796; *Konigsberg v. State Bar*, 353 U.S. 252, 77 S. Ct. 722, 1 L. Ed. 2d 810. Cf. *In re: Sawyer*, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 1473. In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 461, 78 S. Ct. 1163, 1171, 2 L. Ed. 2d 1488, we said, 'In the domain of these *indispensable liberties, whether of speech, press, or association*, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action.' Later, in *Bates v. Little Rock*, 361 U.S. 516, 524, 80 S. Ct. 412, 417, 4 L. Ed. 2d 480, we said, '[w]here there is a significant encroachment upon *personal liberty*, the State may prevail only upon showing a subordinating interest which is *compelling*.' Most recently, in Louisiana ex rel. *Gremillion v. NAACP*, 366 U.S. 293, 297, 81 S. Ct. 1333, 1336, 6 L. Ed. 2d 301, we reaffirmed this principle: '. . .regulatory measures . . .no matter how sophisticated, cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights.'" (Emphasis added) p. 341.

It is noteworthy that the Louisiana Constitution is in accord with the law set out by the above-referenced courts.

Article 1 Section 22 of the Louisiana Constitution states:

"§ 22. Access to Courts

Section 22. All courts shall be open, and every person *shall* have an adequate remedy by *due process of law* and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, *reputation*, or other rights." (Emphasis added)

Also pertinent are Article 1 Sections 1 and 7:

"§ 1. Origin and Purpose of government

Section 1. All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, protect the rights, and promote the happiness and general welfare of the people. The rights enumerated in this Article are *inalienable* by the state and shall be preserved inviolate by the state." (Emphasis added)

and

"§ 7. Freedom of Expression

Section 7. No law shall curtail or restrain the freedom of speech or of the press. Every person may speak, write, and publish his sentiments on any subject, *but is responsible for abuse of that freedom*." (Emphasis added)

The Louisiana Supreme Court first addressed this law in *Kennedy v. Item Co.*, 34 So.2d 886, 890 (La. 1948), a case decided under the Louisiana Constitution of 1921 but is still pertinent today:

> " The very foundation upon which the law of libel is laid is the protection of reputation. The right to a good name and fame is as absolute and as essential to the 'pursuit of happiness' as is the right to life and liberty, characterized in our Declaration of Independence as among those 'inalienable rights with which all men, being created equal, are endowed by their Creator.' A man's reputation is recognized to be as invaluable, and is given the same dignity in the Bill of Rights that comprises Article I of our Constitution, as his right to due process of law in the protection of his life, liberty, and property. . .: freedom of religion. . .; freedom of speech and of the press. . .; peaceable assemblage. . .; and freedom from unreasonable searches and seizures. . .; for in Section 6 (present Section 22 of the Louisiana Constitution) of this article we find the guaranty that '*All courts shall be open, and every person for injury done him in his* rights, lands, goods, person or *reputation shall have adequate remedy by due process of law* and justice administered without denial, partiality or unreasonable delay.' Thus the general declaration in Section 3 (present Section 7 of the Louisiana Constitution) of the Bill of Rights that 'No law shall ever be passed to curtail or restrain the liberty of speech or of

> the press,' is not only qualified by the clause immediately following that 'any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty,' but also by the specific guaranty in Section 6 (present Section 22 of the Louisiana Constitution) that the courts are open for the redress of injury to reputation by the irresponsible use of the right to freely express one's sentiments." (Emphasis in text)

It is respectfully submitted that the Louisiana Supreme Court's holding that a lawyer is prohibited by Rule XIX Section 12A from filing a lawsuit against a complainant for having filed a malicious complaint against him no matter how malicious and no matter how many times it has been done - for the purpose of defending his reputation from such malicious attacks denies said lawyer access to the courts in violation of the First, Fifth and Fourteenth Amendments of the United States Constitution.

It is respectfully submitted that Rule XIX Section 12A was promulgated by the Louisiana Supreme Court, a state entity, and directly abridges speech, thus the protections of the First Amendment apply to this Rule. *In Re: Ivan David Warner and Steven Joseph Rando*, #05-B-1303, Westlaw #1025823 ____ So.3d _____; *Warner, supra*, p. 11, 77.

There is no compelling state interest which would justify this violation of the First Amendment by Rule XIX Section 12A. It is respectfully submitted that the main reason put forth by the Office of Disciplinary Counsel for Rule XIX Section

12A is to encourage the filing of complaints and cooperation with disciplinary investigations. It is further respectfully submitted that encouraging the filing of complaints and cooperation with disciplinary investigations are not compelling state interests. In a recent case decided by the Louisiana Supreme Court on April 17, 2009, *In Re: Ivan David Warner and Steven Joseph Rando*, #05-B-1303, Westlaw #1025823 ____ So.3d _____ dealing with the confidentiality rule in lawyer disciplinary proceedings, the court utilized the findings of four courts that had completed an in-depth First Amendment analysis of confidentiality rules in the context of an attorney discipline system.

The court pointed out on page 67 of said opinion, that two of the four courts (*R.M. v. Sup. Ct.*, 883 A.2d at 378-379 and *Doe v. Doe*, 127 S.W.3d at 735) that completed an in-depth First Amendment analysis of confidentiality rules in the context of an attorney discipline system explicitly held that the interest of encouraging the filing of complaints and encouraging participants to cooperate with disciplinary investigations did not qualify as compelling under strict scrutiny. The Louisiana Supreme Court also pointed out that the other two courts who completed this study (*Petition of Brooks*, 678 A.2d at 145 and *Doe v. Sup. Ct.*, 734 F. Supp. at 985) also held that the confidentiality rules in question could not survive strict scrutiny on the basis of these interests but on different grounds.

As the Louisiana Supreme Court pointed out on page 52 of its April 17, 2009 opinion in the *Warner* case cited above:

> " We must approach the strict scrutiny analysis 'with the posture the Supreme Court has long prescribed for this inquiry: 'It is the rare case in which . . .a law survives strict scrutiny.'"

It is respectfully submitted that this is not that rare case.

It is respectfully submitted that Rule XIX Section 12A also violates the due process clause of the Fourteenth Amendment of the United States Constitution. The Louisiana Supreme Court stated in *Warner* on page 11 (*supra*):

> " The First Amendment to the United States Constitution provides that 'Congress shall make no law . . .abridging the freedom of speech.' U.S. Const. Amend. 1. In a series of cases, the Supreme Court has held, 'that the liberty of speech and of the press which the First Amendment guarantees against abridgement by the federal government is within the liberty safeguarded by the Due Process Clause of the Fourteenth Amendment from invasion by state action.' *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 779, 98 S. Ct. 1407, 1417, 55 L. Ed. 2d 707 (1978)."

Furthermore, as has already been seen, the Louisiana Constitution is in accord with this position:

> "§ 22. Access to Courts

> Section 22. All courts shall be open, and every person *shall* have an adequate remedy by *due process of law* and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, *reputation*, or other rights." (Emphasis added)

The court in *Brody v. Mather*, 460 F.3d 106, 107 (D.C. Cir. 2006) stated:

> " The Supreme Court has long recognized that citizens have a right of access to the courts. . . .The Supreme Court has grounded the right at various times in different provisions of the Constitution: the 'Article IV Privileges and Immunities Clause, the First Amendment Petition Clause, the Fifth Amendment Due Process Clause, and the Fourteenth Amendment Equal Protection and Due Process Clauses.' *Christopher v. Harbury*, 536 U.S. 403, 415 n. 12, 122 S. Ct. 2179, 158 L. Ed. 2d 413 (2002) ("Harbury III") (citations omitted)."

The court in *Nelson v. Mustian*, 502 F. Supp. 698, 705 (1980) stated:

> " The due process clause of the fourteenth Amendment ensures that state and local governments may act against individuals only within certain parameters. Citizens' fundamental rights may be limited only when the government can show that it is promoting a compelling or overriding interest.

Fundamental rights include those specifically enumerated in the Bill of Rights plus a very small group of penumbral rights. See, *e.g.*, *Griswold v. Connecticut*, 381 U.S. 479 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965). When fundamental rights are not involved, a governmental act will be upheld if it is rationally related to any legitimate governmental objective:

> We think it plain that individual liberties may be ranked in a spectrum of importance. At one end of the spectrum are the great liberties such as speech, religion, and association specifically guaranteed in the Bill of Rights. Of equal importance are liberties such as the right of marital privacy that are so fundamental that, even in the absence of a positive command from the Constitution, they may be restricted only for compelling state interests. At the other end of the spectrum are the lesser liberties that may be invaded by the state subject only to the same minimum test of rationality that applies to all state action. See, *e.g.*, *Ferguson v. Skrupa*, 372 U.S. 726, 83 S.Ct. 1028, 10 L.Ed.2d 93 (1963).

Karr v. Schmidt, 460 F.2d 609, 615 (5th Cir. 1972).

This position on the issue of due process was also stated by the Louisiana Supreme Court in the *Kennedy* case (*supra*).

2. THE PUBLIC REPRIMAND OF A LAWYER BY THE LOUISIANA SUPREME COURT BASED UPON RULE XIX SECTION 12A OF THE RULES FOR LAWYER DISCIPLINARY ENFORCEMENT FOR HAVING FILED A LAWSUIT IN 2003 AGAINST A COMPLAINANT FOR DEFAMATION IN THE OFFICE OF DISCIPLINARY COUNSEL IS A VIOLATION OF HIS RIGHT TO DUE PROCESS OF LAW BECAUSE THE LOUISIANA SUPREME COURT DID NOT DECIDE THAT RULE XIX SECTION 12A COULD BE THE BASIS FOR DISCIPLINE UNTIL MARCH 17, 2009

The issue resolved by the Louisiana Supreme Court by its March 17, 2009 opinion was *res nova*. Page 2, footnote 1, 3/17/09 Judgment, #08-B-0954, *In Re: Roy Raspanti*, 8 So.3d 526, 528. It is now the law. It is respectfully submitted that by virtue of the fact that the issue resolved therein by the Louisiana Supreme Court was *res nova*, it was not the law prior to March 17, 2009. As the Louisiana Supreme Court stated in page 23 of its March 17, 2009 decision:

> " First, we are issuing a sanction for a matter for which no one has been sanctioned previously. *There are statements in the jurisprudence that might indicate the possibility of our arriving at an interpretation*

> *of Rule XIX Sec. 12(A) contrary to the interpretation we issue today.* For example, the Board in *Harris, supra,* as recently as 2003, indicated Sec. 12(A) did not provide a sanction; the Board in the instant case found the Rule clear and unambiguous." (Emphasis added)

It is respectfully submitted that sanctioning respondent for violating the law first announced by the Louisiana Supreme Court on March 17, 2009 on this *res nova* issue because of an action he took in 2003 is fundamentally unfair and is a violation of the due process clause of the Fourteenth Amendment.

In the criminal setting, denial of due process is the failure to observe the fundamental fairness essential to the very concept of justice. *Linden v. Dickson,* C.A. 9 (Cal.) 1961, 287 F.2d 55. It is respectfully submitted that in the case at bar, the same holds true. The public reprimand of a lawyer by the Louisiana Supreme Court based upon Rule XIX Section 12A for having filed a lawsuit in 2003 against a complainant for defamation in the Office of Disciplinary Counsel is a failure to observe the fundamental fairness essential to the very concept of justice when the Louisiana Supreme Court did not decide that Rule XIX Section 12A could be the basis for discipline until March 17, 2009.

The Louisiana Supreme Court is a state entity. Acting under its constitutional and inherent authority, the court adopted Louisiana Supreme Court Rule XIX. Louisiana Supreme Court Rule XIX

Section 1 ("Under the authority of Article V, Section 5(A) and (B) of the Louisiana Constitution of 1974 and the inherent power of this court . . .the following Rules for Lawyer Disciplinary Enforcement be and are hereby adopted.") Thus the protection of the First, Fifth and Fourteenth Amendments are applicable to this matter. See *In Re: Ivan David Warner and Steven Joseph Rando*, #05-B-1303, Westlaw #1025823, p. 11; _____ So.3d _____.

Respectfully submitted,

DOUGLAS M. SCHMIDT
Counsel of Record
335 City Park Avenue
New Orleans, Louisiana 70119
Telephone: (504) 482-0159

JOHN A. OCCHIPINTI
(La. Bar No. 10154)
110 Veterans Blvd., Suite 360
Metairie, Louisiana 70005-4930
Telephone: (504) 833-1230

ROY A. RASPANTI
(La. Bar No. 11119)
110 Veterans Blvd., Suite 360
Metairie, Louisiana 70005-4930
Telephone: (504) 835-5388

Attorneys for Roy Raspanti